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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re HAYLEE G. et al.,
Persons Coming Under the
Juvenile Court Law.

B291035

(Los Angeles County
Super. Ct. No. CK96805A-B)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff,

HAYLEE G. et al.,

Respondents,

v.

IRIS B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Debra Losnick, Juvenile Court Referee.
Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and Appellant Iris B.

No appearance by Plaintiff and Respondent Los Angeles County Department of Children and Family Services.

Marissa Coffey, under appointment by the Court of Appeal, for Respondents Haylee G. and Adrian G., minors.

William D. Caldwell for Respondent Guardian Esmeralda B.

After Iris B. failed to resolve the issues that led the juvenile court to assume dependency jurisdiction over her young children, Haylee G. and Adrian G., the juvenile court terminated Iris's family reunification services, appointed a legal guardian for Haylee and Adrian and terminated dependency jurisdiction. Following Iris's completion of an 18-month residential drug treatment and domestic violence program, Iris petitioned the court under Welfare and Institutions Code section 388¹ to reinstate family reunification services with unmonitored visitation. The Los Angeles County Department of Children and Family Services (Department) supported Iris's petition; Haylee, Adrian and their legal guardian opposed it. The court denied the petition, concluding Iris had not demonstrated modification of the court's prior order was in the children's best interests. Iris contends the court erred. We affirm.

¹ Statutory references are to this code.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Prior Dependency Proceedings

a. The section 300 petitions

In January 2013 the juvenile court sustained an amended section 300 petition, finding Iris and Haylee's father, Y.G., had a history of engaging in domestic violence in the presence of then-17-month-old Haylee. The court declared Haylee a dependent child of the juvenile court, removed her from her parents' custody and ordered family reunification services for both parents, including individual counseling, parenting classes and a domestic violence support group. The court also ordered Iris and Y.G. to submit to random and on-demand alcohol and drug-testing and to complete a full drug rehabilitation program if any test was missed or positive.

After Iris gave birth to Adrian in June 2013, the Department immediately filed a new section 300 petition based on the same history of Iris's and Y.G.'s domestic violence. The court detained Adrian, and in September 2013 sustained the section 300 petition. The court declared Adrian a dependent child of the court, removed him from parental custody and ordered family reunification services for both parents.

b. Status Review Hearings, Termination of Reunification Services and Iris's First Section 388 Petition for Modification

After conducting several statutorily mandated review hearings for both children, on September 2, 2014 at a contested combined 18-month permanency planning hearing (as to Haylee) (§ 366.22) and a 12-month review hearing (as to Adrian) (§ 366.21, subd. (f)), the court found Iris had missed several drug tests, failed to meaningfully participate in court-ordered programs and she and Y.G. had continued to harass each other

and had not resolved the domestic violence issues that led to the assumption of jurisdiction. The court terminated Iris's and Y.G.'s family reunification services and set a selection and implementation hearing. (§ 366.26.) Haylee and Adrian remained placed in the custody of their maternal grandmother.

In February 2015, prior to the contested selection and implementation hearing, Iris filed her first section 388 petition, requesting the court reinstate family reunification services. Iris asserted she had begun participating in a drug and alcohol program and had recently completed a parenting program. The juvenile court summarily denied the petition as untimely because Iris was "out of reunification time." At the March 3, 2015 selection and implementation hearing the court terminated Iris's and Y.G.'s parental rights.

Iris appealed, arguing the court erred in summarily denying her section 388 petition. We agreed, reversed the order terminating parental rights and directed the juvenile court to consider whether Iris's petition had stated a prima facie case for modification of the court's order, which would require a hearing under section 388. (*In re Haylee G.* (Aug. 12, 2015, B262771) [nonpub. opn.])

c. *The Department's section 387 petition to detain the children from maternal grandmother and Iris's second 388 petition*

Following our remand, in November 2015 the Department filed a section 387 petition to detain Haylee and Adrian from the custody of their maternal grandmother. The Department alleged the maternal grandmother had allowed one of her other daughters, Nora B., to reside in the home, even though Nora had an open juvenile dependency case involving her own children, and maternal grandmother had failed to protect Haylee and

Adrian. The Department also alleged maternal grandmother had supported Iris's prior section 388 petition with false statements attesting to Iris's improvement; maternal grandmother confessed she had felt bullied by Iris to support the petition and had made false statements despite knowing that Iris's sobriety had not improved.

The court detained the children from their maternal grandmother and placed them in foster care while one of their maternal aunts, Esmeralda B., could be evaluated for placement. Iris withdrew her pending section 388 petition and filed a new section 388 petition in December 2015 to reinstate family reunification services, alleging she had completed prior court-ordered programs and had remained sober since September 2014. The Department recommended the petition be denied because, among other things, Iris had not completed a domestic violence program. Although she had enrolled in a program, Iris failed to appear; lied about the reasons for her absences; began drinking alcohol again; tested positive for alcohol; and had asked staff not to report her positive test to the Department. Meanwhile, the children were placed with Esmeralda after her home was approved.

d. *Denial of Iris's second section 388 petition, appointment of Esmeralda as legal guardian and termination of dependency jurisdiction*

In June 2016, after holding a hearing, the court denied Iris's second section 388 petition and set a new selection and implementation hearing for July 13, 2016. The court also set for the same time a jurisdiction hearing on the Department's section 387 petition.

On July 13, 2016 the court sustained the section 387 petition and continued the selection and implementation hearing

to October 24, 2016. The selection and implementation hearing was continued several more times for various reasons.

On May 15, 2017 the court continued the hearing to June 2017 and directed the Department to prepare a report addressing legal guardianship with maternal aunt, Esmeralda, as the children's permanent plan with unmonitored visitation for Iris. The Department reported Iris had been inconsistent in completing alcohol and drug treatment and domestic violence programs and had not been truthful with the Department. It recommended that visitation remain monitored and, over Esmeralda's objection, identified adoption with the children's prior foster parents as its proposed permanent plan.

On June 26, 2017, despite the Department's recommendation for adoption, the court appointed Esmeralda as legal guardian, ordered monitored visitation for Iris and unmonitored visitation for maternal grandmother and terminated dependency jurisdiction with financial assistance to Esmeralda under the Kin-GAP program. (§ 11363.) The court ordered no visitation for Y.G., finding it would be detrimental to the children.

2. Iris's Third Section 388 Petition

On November 27, 2017 Iris, representing herself, filed a third section 388 petition requesting the court reassert its dependency jurisdiction and "reopen case." Iris claimed she was a changed person, explaining she had resided at the Los Angeles Restoration Church in its live-in, no-charge drug restoration women's program for 11 months. Iris asserted she had remained sober and continued visiting with her children at the church without incident. The court ordered the Department to prepare a written response to the petition addressing Iris's request for

liberalized visitation only and set a hearing for January 19, 2018, which the court continued to February 23, 2018 to allow the Department to interview Esmeralda.

In a February 23, 2018 last-minute information report, the Department confirmed Iris had remained sober and regularly visited with her children in her current sober-living home. The Department expressed concern that Iris had told the children that they would soon be living with her, creating confusion and some emotional upheaval for the children. Nonetheless, citing Iris's progress, the Department recommended that reunification services be reinstated with liberalized visitation to give Iris and her children an opportunity to reunify. The court continued the section 388 hearing (and the adjudication hearing on the Department's section 387 petition) twice more.

On April 6, 2018 Iris, this time represented by counsel, filed an amended section 388 petition requesting a home-of-parent order or reinstatement of family reunification services with unmonitored visitation.² Iris stated she had completed a full

² Because "family reunification services" generally refer to services ordered under section 361.5 for a child in a foster care placement prior to implementation of a permanent plan, Iris's use of that term in her section 388 petition may be misleading. Nonetheless, it is beyond dispute that the juvenile court retains authority to order visitation and services, as Iris requested, after a legal guardianship is in place.

Upon the appointment of a legal guardian, the juvenile court must order visitation with the child's parents unless it finds visitation would be detrimental to the child. (§ 366.26, subd. (c)(4)(C); Cal. Rules of Court, rule 5.735(d)(2).) Even when dependency jurisdiction is terminated, the court retains

Footnote continued to next page.

drug and alcohol program, individual and domestic violence counseling and anger management classes at her sober-living home where she still resided and had been sober for more than 18 months. Iris asserted it was in her children's best interests for the court to reassert jurisdiction and either return the children to her custody or reinstate reunification services with unmonitored visitation.

The Department filed a written response supporting Iris's petition to the extent she sought reinstatement of reunification services with more liberalized visitation. Counsel for the children, on the other hand, urged the court to deny the petition. While complimenting Iris's progress, counsel for the children argued that visitation had not been as smooth as the Department and Iris suggested. Iris had continued to pressure the children as to where and with whom they wanted to live and assured them

jurisdiction over the child as a ward of the guardianship. (§ 366.4, subd. (a).) Upon a proper showing under section 388, the court may reinstate jurisdiction and actively supervise the guardianship in accordance with section 366.3. Whether additional services ordered under its active supervision of a guardianship are properly labeled family reunification services or something else, a court exercising its jurisdiction to supervise a guardianship plainly has the power to order services it deems in the best interests of the child. (See §§ 245.5 ["[i]n addition to all other powers granted by law, the juvenile court may direct all such orders to the parent, parents, or guardian of a minor who is subject to any proceedings under this chapter as the court deems necessary and proper for the best interests of or rehabilitation of the minor"]; 362, subd. (a) ["court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance and support" of a dependent child under its jurisdiction].)

they would soon be leaving their legal guardian and living with her. Arguing the children were stable with their guardian, and observing Iris's past inconsistent behavior concerning her sobriety, counsel for the children argued that it was not in the children's best interests to modify the visitation orders, let alone change their custody.

After holding a hearing on May 10, 2018, the juvenile court denied Iris's amended section 388 petition. The court stated, "The court has been supervising this case for a significant period of time since . . . 2012, and I also happen to have the benefit of supervising the mother's sister's children. The court's had the entire family before it. . . . There is no doubt [Iris] has made significant efforts in resolving the issues that originally brought her to this court and certainly well before the guardianship was ordered. I am somewhat concerned about mother's living in the home that she is in. It's a very structured environment. I have not seen any evidence that the mother could survive without prior life-style outside of the live-in home that she is in. I do not agree with [Iris's and the Department's] assessment that the visits have gone swell. I don't think they have. . . . I'm very concerned . . . about the mom discussing the case with the children. The mom has not ever shown that she has an ability for ongoing care of the children other than for visiting during a monitored basis. I do find that the mother is changing her circumstances, but I am unable to find that the request being made in the 388 is in the children's best interests."

Iris filed a notice of appeal challenging the court's order denying her section 388 petition. The Department has informed this court that, in light of its support of Iris's section 388 petition in the juvenile court, it would not oppose Iris's appeal. Haylee

and Adrian have filed a responsive brief as has their legal guardian.

DISCUSSION

1. *Governing Law and Standard of Review*

Section 388 provides for modification of juvenile court orders when the moving party (1) presents new evidence or a change of circumstance and (2) demonstrates modification of the previous order is in the child's best interest. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re Y.M.* (2012) 207 Cal.App.4th 892, 919; see Cal. Rules of Court, rule 5.570(e); see also *In re Zacharia D.* (1993) 6 Cal.4th 435, 455 [“[s]ection 388 provides the “escape mechanism” that . . . must be built into the process to allow the court to consider new information”].)

When, as here, a section 388 petition is filed after family reunification services have been terminated, the juvenile court's overriding concern is the child's best interest. (*In re Stephanie M., supra*, 7 Cal.4th at p. 317.) The parent's interests in the care, custody and companionship of the child are no longer paramount; and the focus shifts to the needs of the child for permanency and stability. (*Ibid.*; *In re Vincent M.* (2008) 161 Cal.App.4th 943, 960.) “[B]est interests is a complex idea” that requires consideration of a variety of factors. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531; see *In re Jacob P.* (2007) 157 Cal.App.4th 819, 832-833.) In determining whether a section 388 petitioner has made the requisite showing, the juvenile court may consider the entire factual and procedural history of the case, including factors such as the seriousness of the reason leading to the child's removal, the reason the problem was not resolved, the passage of time since the child's removal,

the relative strength of the bonds with the child, the nature of the change of circumstance, and the reason the change was not made sooner. (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 616; *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 446-447; *In re Justice P.* (2004) 123 Cal.App.4th 181, 188-189.)

We review the court's finding for abuse of discretion and may disturb the exercise of that discretion only in the rare case when the court has made an arbitrary or irrational determination. (*In re Stephanie M.*, *supra*, 7 Cal.4th at pp. 318-319.) We do not inquire whether substantial evidence would have supported a different order, nor do we reweigh the evidence and substitute our judgment for that of the juvenile court. (*Ibid.*) We ask only whether the juvenile court abused its discretion with respect to the order it actually made. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

2. The Court Did Not Abuse Its Discretion in Denying Iris's Section 388 Petition

Iris asserts her 18 months of sobriety and completion of a domestic violence program presented a significant change of circumstances and merited, if not a home-of-parent order, at the very least a reinstatement of jurisdiction with liberalized visitation. Iris insists she demonstrated, through the maintenance of her sobriety and regular visitation with Haylee and Adrian, which the Department described as loving and "good nature[d]," a deep and indisputable commitment to reunifying with her children.

Crediting Iris's progress, the juvenile court agreed Iris had carried her burden under section 388 to demonstrate a change of circumstances. However, the court concluded that granting Iris's petition was not in the children's best interests. Although Iris

sought a home-of-parent order, she provided no plan for any on-going care of the children other than stating she could live in the church's sober living home indefinitely. As to her request for more liberalized visitation with on-going court supervision, the court, which had supervised this case for years and was well acquainted with Iris's history of inconsistent behavior, observed Iris continued to have difficulty while in her highly structured environment. Even with a monitor present, the court found, Iris continued to pressure the children as to their custody preferences and assure them they would be living with her soon. Meanwhile, the court observed, Haylee and Adrian, who opposed Iris's section 388 petition and the disruption to their lives that it would bring, were stable and thriving in the custody of their legal guardian with whom they felt safe and secure. The court's denial of Iris's petition under these circumstances was a proper exercise of its discretion.

Iris insists she has worked hard to change her circumstances to reunify with her children and has earned the right, at the very least, to demonstrate her commitment through renewed court supervision. Iris's love for her children and her desire to reunify with them are not in question. However, at this stage of the proceedings, Iris's interests must yield to the best interests of her children. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317; see *In re J.C.* (2014) 226 Cal.App.4th 503, 527 [after reunification services have been terminated, it is the child's best interests in permanency and stability that are paramount; "Mother's best interests are simply no longer the focus"].) Even if Iris's sobriety (which has continued only while residing in the highly structured environment of her sober living home) and completion of long-ago court-ordered counseling were significant

changed circumstances, as the juvenile court found, the court agreed with Haylee and Adrian that a modification of the court's prior orders was not in their best interests. Iris disagrees with that assessment, but she has not demonstrated the court's ruling was an abuse of discretion.

DISPOSITION

The juvenile court's May 10, 2018 order denying Iris's section 388 petition is affirmed.

PERLUSS, P. J.

We concur:

SEGAL, J.

FEUER, J.